UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ADDISON AUTOMATICS, INC., Plaintiff, v. THE RTC GROUP, INC., MICROSOFT CORPORATION, INTEL CORPORATION, AVENT [SIC], INC., and JOHN DOES 1-10, Defendants.	)	Case No.: ________________________ Removed from: Circuit Court of Cook County, IL Case No. 11-CH-38952

DEFENDANT INTEL'S NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Intel Corporation ("Intel") removes this case from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. §§ 1441, 1446, and 1453. Defendants The RTC Group, Inc. ("RTC") and Microsoft Corporation ("Microsoft")—the only other Defendants that Plaintiff has served in this action—hereby join in Intel's Notice of Removal.

I. BACKGROUND

This is a purported class action brought pursuant to the Telephone Consumer Protection Act (the "TCPA"), 47 U.S.C. § 227, arising from an alleged unsolicited fascimile sent by defendant RTC to plaintiff Addison Automatics, Inc. ("Plaintiff"). Plaintiff filed this suit in the Circuit Court of Cook County, Illinois, in late 2011, naming only RTC as a defendant. On February 3, 2012, RTC moved to dismiss Plaintiff's original complaint. RTC's motion was granted in part without prejudice by the Cook County Circuit Court on October 12, 2012, and

Plaintiff filed its First Amended Class Action Complaint (the "Amended Complaint" or "FAC")) on November 9, 2012, naming RTC but also adding as defendants Intel, Microsoft, and Avnet, Inc. ("Avnet") (misspelled in the Amended Complaint as Avent) (RTC, Intel, Microsoft and Avnet collectively are the "Defendants"). Plaintiff also names various John Doe defendants, although there appear to be no allegations in the Amended Complaint with respect to these ficitiously named John Doe parties.

In summary, Plaintiff alleges that RTC "provides marketing services" including "by providing events and semninars." FAC at ¶ 10. Plaintiff asserts that Intel, Microsoft and Avnet are clients of RTC and that each "hosted and exhibited at the seminars promoted by [RTC]." *Id.* at ¶¶ 10-14. Plaintiff alleges that on or about October 1, 2009, Defendants collectively sent Plaintiff a purportedly unsolicited fax advertising one such free seminar. *Id.* at ¶ 16 and Ex. A thereto (copy of alleged fax). Plaintiffs allege that Defendants' conduct violates the TCPA (Count I), as well as consitutes common law conversion (Count II) and an unfair practice for purposes of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2 (Count III).

II. TIMELINESS OF REMOVAL

Intel was served with the Summons and Amended Complaint on November 12, 2012. Under the recently-enacted Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, in cases where multiple defendants are served at different times, "[e]ach defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons … to file the notice of removal." 28 U.S.C. § 1446(b)(2)(B). Removal by Intel is therefore timely because Intel filed this Notice of Removal within thirty days of receiving a copy of the Summons and Complaint in this matter. 28 U.S.C. § 1446(b).

III. FEDERAL JURISDICTION

Intel removes this case pursuant to 28 U.S.C. § 1441(a), because the Amended Complaint concerns a matter over which the district courts of the United States have original jurisdiction. Although Plaintiff inexplicably alleges that "[f]ederal jurisdiction does not exist [with respect to this lawsuit] because no federal question or claim is asserted" (FAC at ¶ 8), Plaintiff's first cause of action is pursuant to the TCPA, a federal statute, over which the Court has original jurisdiction pursuant to 28 U.S.C. § 1331. *See Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740, 745 (2012) ("We hold, therefore, that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA"); *Sawyer v. Atlas Heating and Sheet Metal Works, Inc.*, 642 F.3d 560, 562 (7th Cir. 2011) (TCPA case properly removed to federal court).

IV. THE OTHER SERVED DEFENDANTS CONSENT TO AND JOIN IN INTEL'S REMOVAL

Pursuant to 28 U.S.C. § 1446(2)(A), Intel has obtained consent to remove this action from RTC, the original defendant, and Microsoft, the only other defendant to have been served.[1] Indeed, RTC and Microsoft have expressed their consent to Intel's Notice of Removal by formally joining in it. *Gossmeyer v. McDonald*, 128 F.3d 481, 489 (7th Cir.1997) (notice of removal comports with 28 U.S.C. § 1446(2)(A)'s consent requirement where all defendants sign it).

The consent of Avnet is not required because it has not been served. *See* 28 U.S.C. § 1446(2)(A) (consent required only of those defendants who have been properly joined and served); *but see* 28 U.S.C. § 1453(b) (consent of all defendants to removal of class action not required).

[1] Microsoft was served with a copy of the Amended Complaint on November 13, 2012.

V. VENUE

Venue of this removed action is proper pursuant to 28 U.S.C. § 1441(a), because this Court is the United States District Court for the district embracing the place wherein the removed action was pending.

VI. STATE COURT PLEADINGS

A true and correct copy of Plaintiff's Amended Complaint, and all process, pleadings, and orders served on Intel in the state court action, as well as Cook County Circuit Court's October 12, 2012 Memorandum Opinion and Order, are attached to this Notice of Removal as required by 28 U.S.C. §§ 1446(a), 1447(b). *See* Exhibit A (state court filings).

VII. NOTICE TO PLAINTIFF AND CIRCUIT COURT CLERK

Pursuant to 28 U.S.C. § 1446(d), Intel is serving Plaintiff with this Notice and is filing with the Cook County Circuit Court a "Notice of Filing of Notice of Removal to the United States District Court for the Northern District of Illinois." Pursuant to Federal Rule of Civil Procedure 5(d), Intel will also file with this Court a "Certificate of Service of Notice of Removal to Federal Court."

December 11, 2012

Respectfully submitted,

INTEL CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2012, a copy of the foregoing Defendant Intel's Notice of Removal was served on the below counsel of record via U.S. Mail.

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